



Environment & Society



White Horse Press

Full citation:

Wetlesen, Jon, "The Moral Status of Beings who are not Persons: A Casuistic Argument." *Environmental Values* 8, no. 3, (1999): 287-323.
<http://www.environmentandsociety.org/node/5777>

Rights:

All rights reserved. © The White Horse Press 1999. Except for the quotation of short passages for the purpose of criticism or review, no part of this article may be reprinted or reproduced or utilised in any form or by any electronic, mechanical or other means, including photocopying or recording, or in any information storage or retrieval system, without permission from the publisher. For further information please see <http://www.whpress.co.uk/>

The Moral Status of Beings who are not Persons: A Casuistic Argument

JON WETLESEN

*Department of Philosophy
University of Oslo
0315 Oslo, Norway
email <jon.wetlesen@filosofi.uio.no>*

ABSTRACT: This paper addresses the question: Who or what can have a moral status in the sense that we have direct moral duties to them? It argues for a biocentric answer which ascribes inherent moral status value to all individual living organisms. This position must be defended against an anthropocentric position. The argument from marginal cases propounded by Tom Regan and Peter Singer for this purpose is criticised as defective, and a different argument is proposed. The biocentric position developed here is related to that of Albert Schweitzer and Paul F. Taylor, but rejects their assumption of equal inherent value for all living organisms. It argues instead for equal moral status value for moral persons and agents, and gradual moral status value for nonpersons, depending on their degree of similarity with moral persons. Mary Ann Warren's recent book on *Moral Status* is also discussed. The argument is constructed as a casuistic argument, proceeding by analogical extension from persons to nonpersons. The meta-ethical question of its pragmatic validity is discussed.

KEYWORDS: moral status, inherent value, casuistic argument, strong versus weak cognitivism, pragmatic validity

1. THE QUESTION ABOUT MORAL STATUS

The underlying question I shall discuss is this: Who or what can have a moral status in the sense that we have direct moral duties to them, such as the duty not to cause avoidable harm to them?

There are many competing answers to this question. They may be broadly divided into anthropocentric and nonanthropocentric alternatives. Anthropocentric positions assume that moral status should be confined to humans only, some or all. In the Western cultural area this kind of view has been prevalent. We find it among the Greeks and Romans, such as Plato, Aristotle and the Stoics; we

find it in the Western Church, as in Augustine and Thomas Aquinas; and we find it among modern secular philosophers such as Spinoza, Kant, and many others. Nonanthropocentric positions assume that moral status can be extended to include some or all other individual living organisms as well; or even to supra-individual wholes such as species or ecosystems. This view has also occurred in the Western cultural area, but only among minorities and subcultures. In other parts of the world, however, it has occasionally had a much broader following. This pertains especially to Jainism and Buddhism in the Indian cultural area, as well as in those areas where Buddhism spread: Southeast Asia, East Asia, and over the last century in the West.

In the following I shall argue for a biocentric answer to the main question. This is an individualistic version of a nonanthropocentric position. It ascribes moral status to all individual living organisms; humans, other animals, plants, and micro-organisms. This position is congenial to Albert Schweitzer's 'reverence for life'. To me it has a strong appeal with both philosophical and religious overtones.

On the other hand, I do not accept Schweitzer's assumption that all living organisms should be ascribed an equal moral status value. Such a strong assumption seems to be counter-intuitive, and besides, unnecessary. Instead, I shall argue for a grading of moral status value, as well as of the strength of our corresponding duties to moral subjects. There will be one exception from this grading, however, pertaining to human beings. They are ascribed the highest moral status value, not because they are humans but because they are moral agents or moral persons. This will be a universalistic and egalitarian view of human dignity and basic human rights. Other living beings are ascribed degrees of moral status value depending on their degree of relevant similarity to moral persons. Presumably, animals with self-consciousness or consciousness and sentience have a higher moral status value than nonconscious and nonsentient organisms. Even so, however, the organisms with a lesser moral status value are not devoid of moral status, and for this reason we do have a *prima facie* duty not to cause avoidable harm to them. Or if we cannot avoid harming them in order to survive ourselves, then we have at least a subsidiary duty to cause the least harm. If we accept that plants have a lesser moral status value than animals, this may turn out to be an argument for vegetarianism.

A justification of this kind of position presupposes a refutation of an anthropocentric position, as well as of rival nonanthropocentric positions, both narrower individualistic nonanthropocentrism and holistic nonanthropocentrism. I shall look at some older attempts to refute anthropocentrism, and their rebuttals. It seems that a fresh approach is needed regarding their refutation.

Moreover, a more positive justification is also needed. I shall outline what may be called a dialectical argument in the Aristotelian sense, and more specifically, a casuistic argument, proceeding by paradigmatic examples and analogical extensions. I propose that we start with ourselves as paradigmatic examples of objects we recognise to have a moral status as moral subjects; and

A CASUISTIC ARGUMENT

I argue for an extension of this status to others on the basis of relevant similarities. This is an argument in several steps, first to all moral agents, then to moral persons whether they be agents or not, and then to other moral subjects, whether they be persons or not. First, however, there are some meta-ethical issues that need to be discussed.

2. THE META-ETHICS OF MORAL STATUS

Moral status in terms of moral duties

Mary Anne Warren has recently published an interesting book on *Moral Status; Obligations to Persons and Other Living Beings* (1997).¹ I shall make some comments on her approach as I proceed, especially toward the end. The first thing I would like to draw attention to, is the way she introduces the term ‘moral status’ – a term she uses interchangeably with ‘moral standing’ and ‘moral considerability’. She introduces it as follows: ‘To have moral status ... is to be an entity towards which moral agents have, or can have, moral obligations.’² I approve of this way of introducing the term. Here the notion of moral status is explained in terms of moral obligations, or moral duties, as I would prefer to say, and not the other way around. I suppose this must be a direct duty in the sense of a duty which the agent has to the object itself, and not only an indirect duty which the agent has with regard to the object. An agent may, for instance, have direct duties towards another person, and an indirect duty not to harm the property of this person. Moral status is then ascribed to the person and not to the property.

When moral status is introduced in this way it becomes a relational term, relative to the duties we recognise as binding on moral agents in their relations to other objects. It would be convenient to use the term ‘moral subject’ for these objects. The universe of objects would then be divided into those which are moral subjects and those which are not.

Alternatively, moral status could have been introduced in terms of moral rights. In so far as these are understood as claim-rights, they will be correlated with duties anyway, so it will not make so much of a difference. Besides, it is more controversial whether the notion of moral rights is suitable for subjects who are not persons. For this reason I think it is preferable to introduce moral status in terms of duties rather than rights. Even if a subject is not ascribed rights, other agents may have direct duties towards it, and that is the main thing.³

Moral status value

When we introduce the notions of moral status and moral subjects as outlined above, we can readily add the notion of moral status value as well. This can simply be understood as the value which we affirm of objects which are moral subjects, and deny of objects which are not moral subjects.

When moral status value is introduced this way, it has a certain deontological ring. It is not a value which can be determined prior to or independently of the moral norms which are binding on moral agents. So the duty is not justified from this value, as it might be in a teleological ethics. On the contrary, we ascribe moral status value on the basis of certain duties, and this is a deontological approach to the question of moral status value.⁴ In this way moral status value is relative to a set of direct moral duties which are binding on other moral agents. Whenever moral status value is ascribed to an object, these duties are implied, thereby implying moral side constraints on other moral agents. The subject is ascribed value as an end in itself and cannot be used merely as a means or an instrumental value for other ends.

With regard to terminology, it would be very convenient to have a separate term for moral status value. There are two artificial terms which recommend themselves in this connection: 'inherent value' and 'intrinsic value'. It must be acknowledged that there is no uniform usage of these terms in the literature. Sometimes they are used as synonymous or equivalent terms, and at other times they are used with a difference. What one author calls inherent value, another author calls intrinsic value, and vice versa.

Both terms are sometimes interpreted as absolute terms, and at other times as relative terms. Warren has misgivings against the term 'inherent value', which she seems to interpret as an absolute term implying some kind of moral realism which she rejects.⁵ I believe her objection can be rebutted on two scores. First, we need not interpret 'inherent value' as an absolute term. We can leave that interpretation to one side, and concentrate on a relative interpretation. Second, this is what she does with regard to the term 'intrinsic value', so why not also with 'inherent value'? I think it should be emphasised that both 'intrinsic value' and 'inherent value' can be used as relative terms. But they presuppose different kinds of relations.

I think there are several good reasons for choosing the term 'inherent value' as a specific term for moral status value. One reason is that this will fit nicely with an internal justification for moral status values. Two factors will be required in such a justification: a norm that is binding on moral agents directly in relation to moral subjects; and certain conditions of subsumption; that is, certain properties an object must have in order to be considered a moral subject. If we suppose that these properties must be internal to the nature of the subject, we can say that the inherent value of a subject is supervenient on its inherent properties. The transition from these descriptive properties to the normative status value is warranted by the norm which is presupposed.⁶

Another reason for choosing 'inherent value' is that it is close to the term 'inherent dignity' which is commonly used in the international documents of human rights in the twentieth century. There, however, it is used for the dignity of the human person, but the documents themselves do not exclude the possibility of using it also for subjects who are not persons.

A CASUISTIC ARGUMENT

A third reason is that the term 'inherent value' has been brought to the fore as a term for moral status value by Tom Regan in his well-known book on *The Case for Animal Rights* (1983). This contribution has done much to stabilise the terminology in this field.⁷ It is a pity that it has not been followed up by others. For example, Paul F. Taylor, in his book *Respect for Nature* (1986), uses the term 'inherent worth' as an equivalent with Regan's 'inherent value', while he uses 'inherent value' in a different sense which had better been given another term, such as 'cherished intrinsic value'.⁸ It is surely less confusing to stick to Regan's usage.

I am also disappointed that Warren has not followed up the usage of Regan. She has a preference for the term 'intrinsic value' which I think should be used in a teleological context, such that an object is ascribed intrinsic value in so far as someone has an interest in it for its own sake and not only for the sake of something else. This is a fairly common usage. Here 'intrinsic value' is used as a relational term, relative to the interests (striving, appetite, desire, feelings, attitudes, will) of some subject, and is contrasted with 'instrumental value' which is used of things which are valued on account of their consequences for further ends.

When the terms 'inherent value' and 'intrinsic value' are distinguished as proposed here, they represent two quite different types of 'value in itself'. Moreover, both of these are quite different from moral achievement value, which is the value an agent gains through the moral merit or demerit of his or her actions, as measured against moral norms or values or paradigmatic examples.

Formal equality and differential treatment

When we affirm that some objects have inherent value while others do not, we treat them differently with regard to moral status. If this differential treatment is to be sound and not arbitrary, it must be justifiable by some relevant difference. This requirement is warranted by the Principle of Formal Equality which can hardly be avoided if we are to think consistently in practical matters. Presumably, the best way of formulating this principle is as follows: Cases which are relevantly similar, should be treated in a similar manner; a differential treatment requires a relevant difference.⁹

Applied to the question of moral status, this should be spelled out as follows: If we ascribe moral status to some objects and not to others, the first objects must have some relevant property to the required degree, and the other objects must lack this property, or at least not have it to the degree required. If this property is a necessary condition for moral status, its absence in other objects will be a sufficient condition for denying moral status to them; while if it is only a sufficient condition, it must be lacking in other objects, and they must have no other properties in addition which are sufficient conditions for being ascribed moral status.

Casuistic argumentation

We must beware, however, of not getting ahead of our argument. In everyday morality it is commonly the case that we are more certain about how to judge cases than we are about how to justify our judgements. With regard to who or what can have a moral status, I believe that most people would be fairly certain and fairly well in agreement about at least some cases. If that is true, they will have some paradigmatic examples from which they can draw analogical extensions to other cases where they are more in doubt or disagreement.

This amounts to what is traditionally called casuistic argumentation.¹⁰ There are several varieties of this kind of reasoning: some proceeding from case to case; others from singular cases to general norms and back again to new singular cases; and some from general norms to singular cases. If we start with paradigmatic cases of objects that are recognised to be moral subjects, we can attempt to find which of their factual properties are morally relevant as grounds for the ascription of moral status. These will be the properties which give the relevant similarities to other cases, and a basis for analogical extensions.

Much of this argumentation will be informal: relevant similarities can be used as pro-arguments for a similar treatment; relevant differences can, under some further conditions, be used as counter-arguments. In certain areas there may also be formal reasoning, if the norms are clearly stated, and a case is clearly subsumable under the antecedent conditions of the norm, the consequent may be entailed. But that is a rather special case in practical argumentation.

Two kinds of question will be especially at issue. First, there are descriptive questions about what are the factual properties of the cases at hand. These may be empirical, theoretical or metaphysical properties. Statements about them may have a truth-value and for that reason be considered to be descriptive statements. They may also be the objects of knowledge in the sense of a true, justified belief. Therefore, they can be considered to be cognitive as well.

Second, there are normative questions about whether these factual properties are morally relevant as reasons for the ascription of moral status. One solution to this problem, which I outlined above, is to assume that these factual properties are morally relevant if they are warranted by a valid moral norm which is binding on moral agents in relation to objects of this kind.

Weak cognitivism

If this solution is accepted, it will bring us to the question about what constitutes a valid moral norm? The answer that I shall assume here is a broad recognition theory of moral validity. In fact, there is a whole set of theories of this kind which from a meta-ethical point of view may be characterised as weak cognitivism, and which take a middle course between strong cognitivism and noncognitivism. Let us first have a look at this.

A CASUISTIC ARGUMENT

Strong cognitivism assumes that normative statements can be objects of knowledge in the same way as descriptive statements. This requires that they can have truth-value, and if one accepts moral realism, one believes that there are moral truths and moral facts. Maybe this kind of meta-ethics is true, maybe not. It is hard to tell. At any rate, it is a very contested position, and a shaky foundation for a moral theory. Besides, it is unnecessary for sound moral justifications.

Noncognitivism rejects in a dogmatic manner the assumption that normative statements can have truth-value, and concludes from this that they have no cognitive meaning, and are nothing but the expression or evocation of emotions (emotivism) or of decisions of the will (decisionism).

Weak cognitivism can be less dogmatic. It need not deny that normative statements may have truth-value; nor need it affirm this assumption. This question may simply be bracketed with a Pyrrhonian sceptical *epoché*. Even if normative statements are not assumed to have truth-value, they may be justified with more or less good reasons. So, even if they are not assumed to be objects of knowledge, they can be cognitive in this weaker sense of being justifiable with more or less cogent reasons. This suffices for regarding them as rational.

Recognition theories of pragmatic validity

The point of argumentation, within the framework of a weak cognitivism, is to provide a justification for the acceptability of a thesis that is presented to an audience, and not to prove its truth in a semantic sense, nor its logical validity in a syntactic sense. In other words, the point is pragmatic in a semiotic sense; it pertains to the way we use language to convince or persuade someone to accept or reject a thesis by means of reasons for or against.¹¹

In the Western cultural area this pragmatic approach to argumentation can be traced back to Greek and Roman dialectics and rhetoric. A dialectical or rhetorical argument is used to induce or increase the mind's adherence to the thesis which is presented for its assent.¹² Dialectics and rhetoric study the means for doing this, and the basic assumption is that an argument will not be cogent unless it takes its premises from opinions that are already recognised by the audience addressed. The argument is not used to establish the truth of the conclusion or the premises, nor to preserve the truth-value of the premises and transfer it to the conclusion; but to appeal to premises that are adhered to by the audience, and transfer this adherence from the premises to the conclusion. By means of arguments for or against, the proponent seeks to associate his answer to a question with such recognised premises, and to dissociate the competing answers of his opponents from these premises.

Aristotle's definition of dialectics is one of the important sources in this field. He defines a dialectical argument as an argument which reasons from recognised opinions (*endoxa*). He distinguishes five kinds of recognised opinions: 'those

accepted by all people, or by most of them; or by the wise, and then by all the wise, or most of them, or the most renowned and recognised of them.’¹³

Aristotle does not use such a term as pragmatic validity to describe the binding force of a statement, but in fact, it is not a far step from Aristotle’s conception of recognised opinions to what H.L.A. Hart called a recognition theory of legal validity.¹⁴ This notion can be expanded to cover moral validity, and be understood as a kind of pragmatic validity. If a norm is valid in the pragmatic sense, it is binding. The recognition theory of validity is an hypothesis about the source of normativity; it assumes that a norm gets its binding force from some kind of recognition.

Aristotle’s five types of recognition were a fruitful source for several casuistic traditions in the Middle East and the West in the ancient world. They were considerably refined in the high casuistry from around 1550 till around 1650 in Western Europe, in the theories of so-called probabilism, probabiliorism, equiprobabilism and tutorism, which had much to do with reasonable disagreements due to appeals to conflicting traditions and authorities.¹⁵

As an hypothesis I think we can say that this ancient recognition theory of validity has been modified in two directions in recent years. The contemporary discourse theory of Karl-Otto Apel and Jürgen Habermas has guided the theory in a universalistic direction, and the recent endorsement theory of Christine Korsgaard has connected the theory with a reflective theory of practical personal identity. These authors are perhaps not so directly oriented towards the ancient dialectics and rhetoric, but more towards modern sources. Apel and Habermas work in the pragmatic tradition of Peirce, and Korsgaard in the tradition of Hume and Kant.¹⁶

Discourse theory distinguishes two main kinds of validity claims: claims about the truth or falsity of descriptive or theoretical statements, and claims about the rightness or wrongness of normative practical statements. The latter is a basis for discourse ethics. These statements can be claimed to be valid in a pragmatic sense which is determined by the rules of the language game of argumentation. One of the underlying rules appears to be that if a participant in a serious discussion claims that a certain statement is valid, the others are bound to accept it, unless they can refute it with sufficient reasons, provided it does not need to be clarified first. In so far as the participants follow this rule, there will be a pressure towards agreement. The adherents of discourse theory assume that pragmatic validity has its source in a qualified kind of consensus. It must be an agreement in an open forum in the sense that critics are not to be excluded; and that it must be brought about by means of reasons, and not by other kinds of causes, such as power or deception. It must be acceptable to each participant by a free and informed consent, thus respecting the autonomy of each person.

It seems to me that modern discourse theory is a pragmatic theory of argumentation along the same lines as Aristotle’s dialectics, but that it modifies Aristotle’s theory in three respects. First, it confines its premises to the first of

A CASUISTIC ARGUMENT

Aristotle's five kinds of recognised opinions – consensus. Second, it universalises the conception of consensus so as to include all parties concerned, and ideally, an open public forum – which points in the direction of a universal audience. And third, it requires the qualifications mentioned above, that this consensus is brought about by means of argumentation, and not by power or deception.

Aristotle's theory has a particularistic scope. His notion of consensus, for instance, appears to be restricted to free men in a Greek city-state. His dialectics appears to be adapted to particular groups or particular cultural traditions. In modern multicultural societies there is room for Aristotle's approach within particular communities, but there is also a need for a common morality along the lines of discourse ethics. The latter will tend to be a minimalistic ethics with an emphasis on procedural norms for deciding what is morally right or just; whereas the former will have a richer content and tend in a maximalistic direction. It will be binding on those who wish to be included or remain within the particular group, but not on outsiders. That will be all right, as long as each group respects the common morality.

Christine Korsgaard's endorsement theory can be understood as a modification of the traditional recognition theory in another direction which is oriented toward the practical personal identity of the individual. This will also be relevant in my argument at a later stage.

3. IS IT NECESSARY TO BE A HUMAN BEING IN ORDER TO BE ASCRIBED MORAL STATUS?

If we apply this kind of pragmatic meta-ethics to the question of who or what can have moral status, we shall have a recipe for a casuistic argumentation. In accordance with the dialectics of Aristotle, we will start with paradigmatic examples of subjects who are generally recognised to have moral status, and move on to other cases where there is more doubt or disagreement. I assume we should start with ourselves and extend our moral status to other moral agents; then to other moral persons whether they be agents or not; and then to other moral subjects, whether they be persons or not. In this way we shall also have the advantage of seeing more clearly why it is reasonable to suppose that the inherent value of all agents and persons is equal, and why the inherent value of subjects who are not persons should be graded. This is established simply by using the criteria of moral personhood as the standard for the measurement of the inherent value of other subjects.

This approach will move in the opposite direction of that followed by Warren. She starts with the most controversial cases, such as organisms that are non-conscious, and works her way through those cases about which there is more agreement, such as conscious and self-conscious animals, and up to the cases on which there is most agreement, such as moral agents. By moving in this direction,

I feel it becomes somewhat unclear how she establishes the grading of moral status value, and also how she establishes the moral status of non-conscious organisms.

Against the casuistic approach followed here it can be objected that it is an instance of unabashed anthropocentrism. It endorses 'man the measure' as a standard for the assessment of moral status value.

I think this objection can be rebutted. Normally, in the context of a discussion about who or what can have a moral status, the term 'anthropocentrism' is used for a position which assumes that one has to be a human being in order to have a moral status. One interpretation of this is biological. On this interpretation it is necessary to be a member of the human species (*Homo sapiens*) in order to be ascribed a moral status. Some, and possibly all human beings are included, while nonhumans are excluded.

In view of the criticism launched by Jeremy Bentham, Peter Singer and others against speciesism, this is not a very desirable position to take. They argue, successfully I believe, that this kind of membership is not a necessary condition for being ascribed moral status. It is presumed that if we met a responsible moral agent belonging to some nonhuman species, terrestrial or extraterrestrial, most of us would agree to ascribe moral status to this being; and in that case, we should have a counterexample against the assumption that membership in the human species is a necessary condition.

The objection of speciesism, however, appears to be off the mark with regard to many philosophers who are usually considered to be speciesist. This pertains, for instance, to Plato, Aristotle, the Stoics, Augustine, Thomas Aquinas, Spinoza, Kant, and many others.¹⁷ They ground moral status not in membership in the biological species of mankind, but in the capacity for reason (usually including the capacity for language) and free will, which they take to be constitutive for being a moral agent and a moral person. It does not follow from this that all and only human beings are moral subjects. Theoretically, there could be human beings who are not moral agents or persons, and there could be moral agents or persons who are not human beings. No speciesism is involved, and the charge of speciesism in their case may be nothing more than a straw man.

Nevertheless, it may be reasonable to characterise this group of philosophers as anthropocentric when this term is interpreted in another sense. As a contingent matter of fact it may turn out that only humans appear to be moral agents and moral persons, and therefore only humans are ascribed moral status.

The question for us is whether 'anthropocentrism' is a correct term for the biocentric position adopted in this paper. I think it is not, since this position attributes moral status to nonhuman living organisms. It should be noted, however, that Warren appears to be willing to concede that in one sense this kind of position is anthropocentric, namely in the sense that the moral argument takes its point of departure from human morality, even if this morality is extended to nonhumans.¹⁸ I agree with her that the moral language game has its origin in

A CASUISTIC ARGUMENT

human culture, not in nonhuman nature. It only makes sense to humans. But I think it is unfortunate to call this view anthropocentric. It might be wiser to find another term for it, for instance 'anthropogenic'.¹⁹

4. IS IT NECESSARY TO BE A MORAL AGENT IN ORDER TO BE ASCRIBED MORAL STATUS?

A good place to start in a dialectical justification of moral status, is with the participants in the discussion (including the present reader). The prospects are good that the participants may reach agreement that all of them are ascribed moral status, and that they are ascribed an equal status value.

I shall only mention one kind of argument for this position, deriving from consensus as a source of pragmatic validity in modern discourse ethics. Suppose that that some participants in the discussion proposed to exclude certain other participants from having a moral status. Could this proposal be morally valid? Probably not, since it is likely that those excluded would disagree; at least if their standpoint was not caused by the use of power or deception. Their disagreement would spoil the consensus, and thereby the validity of the proposal to exclude them. In this sense each one has a veto which would prevent exclusion.

This kind of argument could also be used for the assumption that the participants have an equal moral status. Suppose that someone proposed to introduce a hierarchical grading of moral status value among the members of the group. Could this proposal be morally valid? It probably could, at the penultimate level; but not at the ultimate level. At the penultimate level the participants might accept on a hierarchical order within some particular domain of action, with a grading of the social status according to the rank in the hierarchy. But if this hierarchy were to be morally valid, it would have to be agreed to by all at the ultimate level, prior to any ranking. This implies equality of moral status at the ultimate level. So here again, each one has a veto, which is the basis for the assumption of equality.

Suppose, for the sake of the argument, that an agreement could be reached on these matters. Then the participants would agree about the recognition of at least some paradigmatic examples of subjects with a moral status; notably themselves. This could be a good first step in a dialectical argument.

A second step could be to extend the scope of moral status from actual to potential participants in the discussion. The actual participants constitute a particular forum which may be either closed or open. If we approve the analysis of pragmatic validity which has been proposed in discourse ethics, we will hold that whenever we claim that a proposition or norm is pragmatically valid, we signal that we assume that it can be cogently justified. This implies that we must be prepared to defend it against any serious objection. On one reading, this implies that we assume it can be defended against any objection set forth by

anyone, anywhere, anytime, provided it is done within the context of a serious discussion. This is much the same as to say that we assume it can be defended before a universal audience.²⁰ On another reading, which is somewhat more moderate, it implies that we assume it can be defended against any objection set forth in a serious discussion in an open forum. Whether a claim really is valid, will be somewhat hypothetical. Even if it has won the day so far, it may be refuted in the future. But the more it has been tested and successfully defended in an open public discussion, the stronger reasons do we have for giving it credence. It follows from the pragmatics of this that a claim to validity is not compatible with an arbitrary exclusion of opponents. Any opponent who wants to take part seriously in the discussion, is implicitly ascribed an equal moral status with those who already take part. Since there are no limits to this class in space or time, this implies a universalistic extension of moral status, including all potential participants living now or in the future.

Moreover, we may assume that being a participant in such a discussion is equivalent with being a moral agent. So far, we have said that moral agents must be able to be bound by moral duties. Another way of saying this, is that they must be able to take moral responsibility for their actions, and to be morally answerable for them. This requires certain abilities. Traditionally, it is assumed that three conditions must be met in order to be a moral agent. One must have the abilities of free will, reason and linguistic competence. Linguistic competence is necessary in order to understand the moral questions that are debated and the answers given; reason is required in order to assess arguments for or against the competing answers; and free will is required in order to be able to make judgements or decisions, and to act, since these outcomes must not be entirely determined by external causes, but co-determined by internal reasons which are acceptable and cogent for the deliberator.

From these premises it seems to follow that whoever makes a validity claim and addresses it to an open public forum, implicitly recognises that all moral agents have an equal moral status with himself or herself.

The argument from marginal cases as an objection to Kant's anthropocentrism

Warren takes the notion of moral agents seriously and formulates a special principle for agents which she calls the Agent's Rights Principle: 'Moral agents have full and equal basic moral rights including the rights to life and liberty.'²¹ Warren means what she says. Moral agents are those who are able to deliberate and act in a responsible and answerable way. This pertains to most human beings of a sound mind who have attained their majority. Agent's Rights apply to all of them and only them.

Warren attributes this latter view to Kant. Here she follows the lead of Tom Regan and Peter Singer. They start quite correctly by attributing to Kant the

A CASUISTIC ARGUMENT

‘anthropocentric’ view in the second sense distinguished above. Kant assumes that moral status should be ascribed to all and only human beings in so far as they are moral persons, and equally to all.

They go on, however, to interpret Kant’s concept of a moral person as synonymous or equivalent with his concept of a moral agent. If this is a correct interpretation, it will follow that Kant excludes a number of human beings from having a moral status. This pertains to the so-called ‘marginal humans’ in the sense of humans who are not moral agents, such as minors, neonates, foetuses, embryos, zygotes, the severely mentally retarded, the severely brain damaged, and the severely senile, and those born without a brain. Some of these are self-conscious subjects, others are conscious and sentient without being self-conscious, and still others are insentient. If agency is a necessary condition for moral status, it follows that all of these will be denied not only an equal moral status with agents, but they will be denied any moral status at all.

Regan, Singer and Warren agree that this consequence of Kant’s position is not acceptable, and they are probably right when they assume that their view is in line with common sense and is widely shared. If we agree with that, it follows that we have a counter-example against Kant’s thesis that it is necessary to be a moral person in order to be ascribed moral status. They take this to be a decisive objection to Kant’s position with regard to the criterion of moral status.

In that case the question is open as to what may ground the attribution of a full and equal moral status to all (or almost all) human beings. We can distinguish two routes to an answer to this question. The first one maintains that personhood is equivalent with agency, and attempts to found moral status on some other internal property (in the case of Regan and Singer) or on a combination of internal properties and external relations (in the case of Warren). The second route is based on an alternative interpretation of the concept of a moral person which avoids the argument from the marginal cases.

Regan and Singer have developed two versions of the argument from marginal cases.²² Both versions can be understood as attempts to find an internal property that is common to marginal humans and moral agents, and which can be used as a ground for the assumption that all or most humans are ascribed moral status or an equal moral status.

Regan seeks a solution to this problem in terms of being subject-of-a-life. This presupposes an ability to have ‘beliefs and desires; perception, memory, and a sense of the future, including their own future; an emotional life together with feelings of pleasure and pain; preference- and welfare-interests; the ability to initiate action in pursuit of their desires and goals; a psychophysical identity over time; and an individual welfare in the sense that their experiential life fares well or ill for them, logically independently of their utility for others and ... of their being the object of anyone else’s interests’.²³

Regan proposes this property as a ground for the ascription of an equal moral status, an equal inherent value and equal basic rights to all human beings who

satisfy it. Moreover, appealing to the Principle of Formal Equality, he argues that similar cases must be treated in a similar manner in so far as they share this relevant property. He assumes that this applies to at least all normal mammals of one year or more, and possibly to other species as well, such as birds. He states explicitly that this criterion is intended only as a sufficient, not a necessary condition for the ascription of moral status. Therefore it is theoretically possible that many more kinds of living beings could have a moral status. But he leaves that question open.

Singer follows up on this point and proposes a more comprehensive internal property: sentience – that is, the ability to have conscious feelings of pleasure or pain. In so far as this is taken to be the morally relevant property for the ascription of moral status, his position is equivalent to that of the classical hedonistic utilitarianism of Bentham. Singer interprets the Principle of Formal Equality differently from Regan, not as applying to equal moral subjects but to equal interests. Interests are ascribed to sentient beings, and equal interests should be treated equally. Some animals have more advanced interests than others. This applies to those animals Regan calls subjects-of-a-life. Singer holds a version of preference utilitarianism with regard to them. Other animals have interests based on sentience only without self-conscious preferences. This pertains to both marginal humans and non-human animals. On this criterion only non-sentient living beings are excluded. Those who are included, that is, all sentient beings, have a moral status in the sense that their interests should be considered when a decision is to be made. Their interests should be taken into account when calculating which course of action to choose in order to maximise the welfare of all concerned.

Both Regan and Singer draw a number of radical consequences from these positions with a view to the protection of animals. Granted that there is a morally relevant similarity between marginal humans and these other classes of non-human animals, we face a dilemma. Currently, there is a widespread inconsistency in our treatment of these cases. We use domestic and wild animals for food, skins, and fibres; for biomedical experiments, for entertainment, etc. in ways that are quite out of question regarding our treatment of marginal humans. In order to be consistent, we cannot allow ourselves to treat cases that are relevantly similar in a differential manner, unless this is justified by a sufficient relevant difference. Presumably, therefore, we must either stop treating these animals in the customary ways, or we must start treating marginal humans in the way we are now treating animals. Since the latter alternative is not acceptable, only the former remains.

This argument has been an important part of the justification of much animal rights activism over the last 25 years. Regan's version of the argument gives a more stringent platform than Singer's. Since Singer's approach is utilitarian, he tends to regard the notion of moral rights as spurious, or as merely rhetorical. What really matters, in his view, is the maximisation of the preferences, or the

A CASUISTIC ARGUMENT

pleasures and absence of pain, of all concerned, sentient animals included. This does not give very strong protection of the interests of individual animals, and it hardly gives any protection at all of their lives, provided that they can be killed painlessly. On this score, Regan's justification is much more demanding, since he takes the notion of rights much more seriously. He spells out in greater detail the conditions under which it can be justified or excused to cause harm to a subject-of-a-life. Within his deontological framework it is not an acceptable excuse to harm some organisms in order to benefit others. On this view, Regan considers death to be a more serious harm than Singer does.

Up to a certain point, Warren goes along with both Regan's and Singer's versions of this argument. She admits that in so far as the moral status of marginal humans is assessed on the basis of internal properties alone, this may be done in terms of being subject-of-a-life or in terms of sentience, and that these criteria can be used for an analogical extension to non-human animals as well. This argument, however, will not suffice to justify the assumption that marginal humans have an equal moral status-value with moral persons in the sense of moral agents. Warren considers this to be a counter-intuitive and unacceptable result of the uni-criterial approach based on internal properties alone, and she proposes a multi-criterial approach instead where this is supplemented with an external relational criterion. At this point she appeals to what she calls the Human Rights Principle which ascribes equal moral status-value and equal basic human rights to all sentient human beings who are acknowledged members of human communities. This will suffice to include all marginal humans on an equal footing with moral agents, excluding only those humans who are non-sentient.

A rebuttal of the argument from marginal cases

It may well be that Warren's proposal at this point is more adequate in relation to common sense than the positions of Regan or Singer. Nevertheless, it appears that all three of them have based their arguments on the assumption that the concepts of a moral person and a moral agent are synonymous or equivalent. This assumption can be contested, and if it is rejected, it seems that their arguments will not work.

An alternative to their assumption has been developed by Jens Saugstad in his doctoral thesis on *The Moral Ontology of Human Fetuses; A Metaphysical Investigation of Personhood* (1994). On Saugstad's interpretation, Kant's concept of a moral person is generic in relation to that of a moral agent. This implies that the class of moral agents is a subclass of moral persons; some moral persons are moral agents, others are not.

On the conceptual level Saugstad gets this result by distinguishing two kinds of capacities: capabilities and abilities. In order to be a moral agent, a person must be able to take a moral responsibility for his or her actions, and to be answerable for them. This requires not only the capabilities of free will, reason and a

linguistic competence; but also the operative ability of realising these capabilities in practice. However, a subject may have the capabilities of moral agency without having the operative abilities. In that case the subject is a moral person without being a moral agent, since moral personhood is grounded on the actual capability and not on the potential ability.²⁴

Two consequences follow from this solution. In the first place, it extends moral status to sentient marginal humans. The sufficient and necessary condition for this extension is the presence of the capability of moral agency. If this is present, it is not necessary that the operative ability is also present. On this ground equal inherent value and equal basic rights can be ascribed to both marginal and normal human beings.

Admittedly, the assumption about the presence of this capability is not equally verifiable in all cases. In some cases it is verifiable, such as in normal youths, children, neonates, and foetuses in the later stages of pregnancy. They do not have the actual ability of being moral agents, but they have it potentially and it will be actualised in due time. Still they may be assumed to have the capability as an actual internal property, and this is the ground for considering them to be persons. It may be asked whether this argument justifies the assumption about equal moral status value. Would it not be possible to introduce grading on the basis of how far the potentiality for moral agency has developed? This view has been propounded in discussions about abortion. On the basis of the present argument, however, it must be rejected, since moral status value is assumed to be grounded on capabilities of agency, which are actual, and not on potential abilities.

In other cases there are humans who have been moral agents, but have lost the required abilities. This pertains to many cases of the severely brain damaged and the severely senile. If we assume that they have retained their capabilities of being moral agents, we still have a sufficient reason for ascribing equal inherent value to them. Against this it may be objected that they may have lost not only their ability of being moral agents, but also their capability. There is room for much empirical doubt about these borderline cases, and for that reason there is also room for giving them the benefit of doubt. Admittedly, this is a somewhat *ad hoc* assumption. Even if it is not a good scientific explanation, however, it may be a good moral reason.

This kind of argument can also be applied to the most difficult cases of marginal humans who have never had the ability of being moral agents and will never get it, such as the severely mentally retarded. Theoretically, it is not inconceivable that the capability is still there, and that this can be used as a ground for ascribing an equal moral status value to them. If this justification is not accepted, however, it does not necessarily follow that they have no moral status value at all. They may have a gradual moral status value, depending on the argument which we shall discuss below. As for those who are born without a brain, they do seem to be excluded.

A CASUISTIC ARGUMENT

According to the present argument, inherent value is ascribed equally to all moral persons. Hence this position is universalistic and egalitarian. If this way of understanding the relation between moral persons and moral agents works, there will be no need to distinguish Agent's Rights and Human Rights the way Warren does. They will be grounded in the same internal property of moral persons, and there will be no need for a supplementary justification based on an external relation such as membership in a human society.

The second consequence which follows from this position is that there will be a relevant difference between human and non-human beings, which can justify a differential treatment with regard to the ascription of moral status. Humans have a property which other animals lack, notably the capability of being moral agents, and if this property is accepted to be a necessary condition for the ascription of moral status, then its absence in other animals will be a sufficient condition for denying moral status to them. In this way Kant's anthropocentrism is vindicated, albeit with the proviso mentioned earlier that this rests on the contingent fact that only humans are moral persons. Theoretically, there might be other moral persons also, but there seem to be none, excepting perhaps some of our closest relatives among the primates.

Some concessions to Kantian anthropocentrism

If this argument is tenable, it will stand out as a main challenge to those who hold a non-anthropocentric position with regard to who or what can have a moral status. In that case we shall have to admit that Regan, Singer, and Warren have not succeeded in refuting this position by means of their argument from marginal cases. Their argument has been rebutted, and if no better refutation of Kant's anthropocentrism is forthcoming, it will have the day. I shall venture, however, to propose some alternative arguments against Kant's anthropocentric position, as defended by Saugstad.

First, however, I will admit that the Kantian approach has a strong point with regard to the justification of the full and equal moral status of all human persons. This assumption requires a categorical concept in order to be justified, such as the concept of a moral person defined by both sufficient and necessary conditions. From a logical point of view, it might also be possible to have alternative sets of necessary and sufficient conditions. This appears to be a plausible strategy for a moral justification of a universalistic and egalitarian conception of moral status with regard to human dignity and human rights. Something along these lines seems to be required in order to justify the basic assumptions of the *Universal Declaration of Human Rights* of 1948, which is widely acclaimed in the world today. Article 1 of this document states that 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.' When read in the context of the Preamble, 'human beings' can be interpreted as 'human

moral persons'. All persons are ascribed equal dignity; which in the preamble is called 'inherent' – that is, all human moral persons are ascribed an equal inherent moral status value, and equal rights. And this is justified on the ground of humans being endowed with reason, freedom which may be interpreted in the direction of free will; and conscience, which in view of the preparatory documents can be understood to imply communicative ability and language.²⁵

5. IS IT NECESSARY TO BE A MORAL PERSON IN ORDER TO BE ASCRIBED MORAL STATUS?

Confusing the justification of equality with the justification of moral status

But even if it is conceded that it is necessary to be a moral person in order to have an equal human dignity, it does not follow that being a moral person is a necessary condition for being ascribed moral status in the first place. Granted that moral personhood is a necessary condition for equal moral status, it may well be only a sufficient condition for moral status. If one assumes that a justification of the former assumption is also a justification of the latter, there is a danger of confusion. We must ask, then: Are there any further good reasons for supposing that moral personhood is a necessary condition for the ascription of moral status?

Doubtful pragmatic validity in terms of recognition

I shall briefly consider two kinds of arguments, one based on validity and the other on truth. I shall draw on the recognition theories of validity outlined above, especially on the particularistic version of Aristotle and the universalistic version of Habermas.

Let us suppose that within a particular community there is a general recognition of the thesis that moral personhood is a necessary condition for moral status. We may suppose that this is generally accepted by those who are recognised to be wise within the tradition as well; the authorities and experts. Within this framework there will be a strong presumption for this thesis. It functions as a kind of pre-judgement, not to say prejudice. As long as the thesis is recognised in this way, there is no need for any further justification of it before it is challenged by sufficiently strong objections. And then the burden of justification is placed on the opponent.

This is a kind of contextualistic theory of justification which rests on contingent historical facts about what is recognised within a particular forum. It amounts to a kind of theory of inertia with regard to justification, which is in accordance with the old juridical adage: *stare decisis, non quietas movere*; 'let the decided stand, don't move that which is in peace'.²⁶ When a position has been institutionalised in a community in this way, it may also be binding on the

A CASUISTIC ARGUMENT

members and sanctioned in various ways, informally or formally, morally or legally. Deviance may ultimately be punished with ostracism, expulsion or excommunication. Compliance is the cost of continued membership in the community. It may be extremely difficult to find a justification which will be convincing to the prevailing opinion. Instead of solving the problem of justification, a good conservative in this kind of tradition will dissolve it by showing that this is the established practice, and no further justification is needed.

A standard objection to this kind of argument is that it is highly relativistic. Even if it explains how a thesis can be binding on the insiders of a particular community or tradition, it gives no grounds for assuming that outsiders belonging to other communities or traditions are also bound by it. Outsiders are more likely to regard this approach as a clear instance of prejudice. A Wittgensteinian might endorse it, but it is doubtful that Saugstad would, since he appears to make universal claims.

Doubtful pragmatic validity in terms of consensus

Let us move on to Habermas's universalistic recognition theory validity. Could the thesis that moral personhood is a necessary condition for moral status be defended within this framework? That is not likely. It would require that there be a universal consensus about the thesis, which there is not. On the contrary, there are many groups and traditions who have rejected it for millennia, for instance the Jains of India and the Buddhists of India and other parts of Asia and the rest of the world. It has also been rejected by various subcultures in the Western area.

The proponent of the thesis might deny that these instances are counterexamples. What they prove, is only that some people are confused in their thinking and committing a category mistake. If this defence is used, it seems to indicate that the proponent is making a stronger claim. This claim could be made in terms of truth; and that brings us to the second main type of defence.

Doubtful truth

The thesis that one must be a moral person in order to be ascribed moral status might be claimed to be true. This could be some version of moral realism. I shall not attempt to discuss this, except for one remark. There are different versions of moral realism based on different theories of truth. A theory of truth based on intuitive self-evidence might give quite different results depending on whose intuitions are appealed to; and the differences of result could be multiplied by appealing to other theories of truth such as those based on correspondence, coherence, reflective equilibrium, etc. In view of this, the sceptical question will be: Which of these theories, if any, is the true one? A dogmatic sceptic will deny

that any of them could be true, while a Pyrrhonian sceptic would neither affirm nor deny this possibility but bracket the question and leave it undecided.

Admittedly, the preceding discussion is far from exhaustive. As far as it goes, however, I think it undermines the assumption that we have compelling reasons to accept that moral personhood is a necessary condition for moral status.

6. IS THERE A RELEVANT DIFFERENCE BETWEEN MORAL PERSONS AND OTHER BEINGS IN TERMS OF SUFFICIENT CONDITIONS FOR MORAL STATUS?

Let us suppose, for the sake of the argument, that the defender of an anthropocentric position grants this point and gives up the claim about necessary conditions. In order to justify his position, he will then have to move on and argue in terms of sufficient conditions. In that case he must show that there is another kind of relevant difference between human persons and nonhuman beings which justifies a differential treatment with regard to the ascription of moral status. He will have to show that beings who are not moral persons have no other properties that are sufficient conditions or good reasons for ascribing moral status to them. Which other properties should he take into consideration? It would be reasonable for him to take into account the proposals adduced by his opponents and attempt to refute them.

The proponents of a nonanthropocentric position, on the other hand, face two challenges. They must be able to show, first, that there are factual similarities between human moral persons and other living beings; and, second, that these similarities are morally relevant in the sense that they are sufficient conditions, or at least good reasons, for ascribing moral status to those who have the properties. The dispute between the proponents and opponents of an anthropocentric position will turn on these two points.

Descriptive similarities

The properties proposed by the supporters of a non-anthropocentric position appear to fall into three broad groups: (1) being subject-of-a-life, which presupposes self-consciousness; (2) being sentient, which presupposes consciousness; and (3) being alive, which presupposes a certain kind of striving or self-determination. Let us first review these properties and then consider their moral relevance.

(1) The first main property (subject-of-a-life, self-consciousness) is the one proposed by Regan as a basis for his animal rights ethics. We should note that he considers it to be only a sufficient, not a necessary condition for the ascription of moral status. So for him it is an open question whether other organisms which

A CASUISTIC ARGUMENT

are not subject-of-a-life can also be ascribed moral status. Moreover, we should note that Regan subsumes at least all normal mammals of one year or more under his criterion. There could be others as well, such as birds. His reason for the restriction of 'one year or more' is due to the assumption that these properties should be understood as 'abilities'. If we substitute this with 'capabilities' in the way we did above when discussing the difference between agents and persons, we may drop that restriction.

(2) The second main property (sentience, consciousness) is the one proposed by Singer as a basis for his animal welfare ethics. He assumes that this includes most, if not all animals, and suggests (probably as a joke) that the line between sentient and non-sentient animals may perhaps be drawn somewhere between shrimps and oysters.²⁷ It is to be expected that it will be a contested matter where this line is to be drawn. In any case, recent brain research gives us good reasons for assuming that we share many of our most central emotions with very many animals. In view of Paul D. MacLean's research on the triune brain in evolution, we may assume that our capability of many of the most strongly motivating emotions have their seat in the brain-stem which is the oldest part of the brain.²⁸ These are emotions which are necessary for a motile animal striving to survive, to find food, to escape being the prey of other food seekers, and to find a sound and strong partner of opposite sex and mate; and to take care of the offspring, etc. These emotions we share with all mammals, birds and reptiles. But we may assume that there are analogous emotions which we also share with our earlier progenitors in the evolution of life on earth: the amphibians, the fish and most probably also with invertebrate animals.

(3) The third main property (life, conation) is the one proposed by Paul F. Taylor as a basis for his biocentric ethics. This is a property which is supposed to be common to all living organisms, and which we therefore share with animals, plants and micro-organisms. In view of the general theory of evolution, it is not surprising that there should be such basic similarities between all living organisms, since we have a common genetic ancestry. This pertains also to our earliest forbears, the unicellular organisms, both the prokaryotes which emerged in the seas some 3800 million years ago, and the eukaryotes which emerged some 1500 million years and evolved to multicellular organisms that differentiated into the multiplicity of species of life on earth among plants and animals.

This basic similarity between all living organisms is often characterised in terms of a striving for self-preservation. The Latin term for this is *conatus*, 'conation' or 'striving', which was the current term used by the Stoics in antiquity. Their thinking was influenced by Aristotle's conception of goal-directed striving (*entelecheia*) for self-realisation, involving a transition from potentiality (*dynamis*) to actuality (*energeia*). The terminology of conation was central to Spinoza and Leibniz some 300 years ago, and in recent literature on biocentrism it has turned up again in the term 'conativism'.²⁹ In recent biological

theory the term *autopoiesis* – ‘self-production’ has also been proposed as a term belonging to this family. Two traits stand out as particularly central in this connection: the capability of self-organisation and self-reproduction.³⁰

This trend of thinking is reflected in Paul Taylor’s conception of living organisms as ‘teleological centres of life’. Each living organism is a goal-directed system, striving to realise its inherent nature and to maintain itself within the homeostatic variables of this nature. This gives a basis for a theory of value. Whatever helps or hinders this striving, can be ascribed a positive or negative value for this organism, and the organism can be said to have a good of its own.³¹

This seems to make good sense in the case of conscious and sentient animals. If we interpret Taylor’s theory in the light of Spinoza’s theory of affects and his general theory of value, we can say that these animals are more or less conscious of the factors which influence their well-being, reacting with positive or negative feelings or attitudes toward things that are perceived to help or hinder their striving. These emotional reactions feed back to their striving so as to determine its direction and strength and constitute it as a positive or negative conscious desire. Those things which are the objects of positive feelings (joy, pleasure), positive attitudes (liking, love) or positive desires are evaluated as good; while those which are the objects of negative feelings (sorrow, pain), negative attitudes (disliking, hatred) or negative desires are evaluated as bad.³²

There may be more doubt, however, whether it makes sense to attribute a good of its own to organisms which are non-conscious and non-sentient, such as is presumably the case with some animals, plants and micro-organisms. People like Joel Feinberg, Kenneth Goodpaster, Tom Regan, Paul Taylor, and Holmes Rolston think this makes good sense.³³

If we turn once more to Spinoza’s theory of affects, this certainly makes sense within his framework. Spinoza ascribes conation to all living beings. When this striving is consciousness, he calls it ‘desire’, and when it is also rational he calls it ‘will’. But whether it is conscious or not, he calls it ‘appetite’ (or ‘need’), which can therefore be attributed to both conscious and non-conscious living beings. There is no difficulty in saying that external factors may be beneficial or harmful in relation to the striving or needs of a non-conscious and non-sentient organism.

Before we leave this topic, let me mention another way of making sense of ascribing a good of its own to nonconscious organisms such as plants and micro-organisms. It can be done by attributing to them a will to live. This is the expression used by Albert Schweitzer in his justification for reverence for life. He extends moral status from human beings to all other living beings on the basis of the will to live, which is a term which he borrowed from Arthur Schopenhauer.

We must note, however, that there are two quite different ways of interpreting ‘the will to live’. On one interpretation it presupposes rationality, or at least consciousness and sentience. Mary Anne Warren interprets Schweitzer in this direction, and uses it as an argument against his position. Although it is

A CASUISTIC ARGUMENT

theoretically conceivable that all organisms have consciousness and sentience, this assumption is not supported by the best available empirical evidence, and it is not advisable to base a justification of moral status on it.³⁴ According to the other interpretation, however, the will to live does not presuppose rationality, consciousness or sentience, but is interpreted along the lines of Spinoza's notion of conation or appetite mentioned above. This would take care of Warren's objection, but she does not discuss this possibility.

Warren also has a second objection against the assumption that the inherent teleology of living organisms is a sufficient condition for ascribing moral status to them. The objection is that organisms are not unique in being organised teleologically; and that there are apparent counterexamples, such as complex teleologically organised machines, to which we would not ascribe moral status. She admits, however, that 'if a machine were capable of the functions typical of organic life, or if it were sentient and/or self-aware, then it may be argued that it ought to be considered an artificial life form, rather than an inanimate object'.³⁵ Presumably, she would accept that this could be an argument in favour of attributing moral status to it.

Normative relevance

We have looked at some descriptive similarities between human moral agents or persons on the one hand, and other living organisms on the other, based on properties which adherents of a nonanthropocentric position commonly adduce as grounds for an extension of moral status. Let us suppose, once more for the sake of the argument, that there is agreement on the factual questions here. Then we can turn to the normative question whether these properties are relevant as grounds for the ascription of moral status to those individuals who have them.

The question we face here can be stated as follows: Is there any good justification for the non-anthropocentric assumption that the properties we have considered are morally relevant? Why should we consider the self-consciousness of beings who are not persons, or their consciousness and sentience, or simply their teleological striving as relevant grounds for being morally considerable?

At this point I find it helpful to follow the lead of Christine Korsgaard's theory about the sources of normativity. As I stated above, I interpret her position as a version of the recognition theory of pragmatic validity which can be traced back to the dialectics and rhetoric of the ancients. Her own term for it is an endorsement theory of normativity which she develops on the basis of an interpretation of Hume and Kant in terms of a model of practical personal identity. This interpretation is also influenced by Harry Frankfurt.³⁶

Each moment we face a new situation which we cognise and interpret in certain ways, and respond to with certain feelings, attitudes and inclinations to act in one way or another. Our actions, however, are not causally determined by

our inclinations, since we have the ability to reflect on them and consider whether to accept or reject them as reasons for action. This brings up a normative question: Shall we accept or reject our impulse to respond and act in a certain way? When we deliberate such questions, it is possible for us to take into consideration other factual assumptions, values and norms which we have committed ourselves to previously. Our deliberations take place within the horizon of what we have endorsed and identified ourselves with earlier in life; that is, on the background of our personal identity. This is a practical conception of personal identity, not a theoretical conception. It develops over time through series of decisions by which we strengthen or weaken our dispositions and inclinations in certain directions. In so far as our response to a situation is coherent with our practical identity or strengthens it, we may have a more or less good normative reason to act on it; whereas if our response is incompatible with our identity and would undermine it, we have a more or less good normative reason not to act on it. Korsgaard uses the term 'obligation' in this latter case. We have a normative obligation not to act on subjective inclinations which would undermine our practical identity.

It is interesting to ask what implications this theory could have for the question at hand. The question is whether the properties proposed by nonanthropocentrists are normatively relevant as grounds for the extension of moral status to beings who are not persons. In the light of Korsgaard's theory, it seems that they will acquire this function on two conditions. In the first place, I must endorse these properties and recognise that they have a place within my own personal identity; and secondly, I must recognise that there is in fact a similarity between these properties of mine and those of certain other living organisms. If both conditions are satisfied, I will recognise that the factual similarity is also normatively relevant in such a way that I shall have a good reason for recognising these properties as relevant grounds for a similar treatment of myself and these other organisms with regard to the ascription of moral status value.

Accordingly, very much will depend on how I conceive my personal identity. This is not only a theoretical question about who I am, but a practical question about who I wish to be. It is a kind of existential question with a certain leeway of choice. It seems, in general, that the more inclusive my identity, the more I will be inclined to accept a biocentric position. Then I will endorse as part of my practical personal identity those properties I have in common with other living beings who are not persons: feelings and emotions which we have in common with other animals, and the fundamental striving for self-preservation which I have in common with all living organisms, including plants and micro-organisms. If this argument is accepted, however, the question remains open what degree of inherent value I should ascribe to these other organisms, equal to my own or gradual and lesser than my own.

A CASUISTIC ARGUMENT

On the other hand, it seems to follow that if we take an anthropocentric position, we must confine our practical personal identity to those properties by which we are constituted as moral persons; that is, with our capabilities of being moral agents (reason, linguistic capacity, and rational will). In this way we get a somewhat cerebral conception of ourselves, since these properties are limited to those which have their seat in the neocortex. From an evolutionary point of view, these properties are rather new. They are no more than a partial selection of all those properties which are included in being human, and for this reason we shall have only a fragmented and inadequate conception of ourselves. This implies that we shall be alienated from those parts of ourselves which we share with other living beings, and thereby alienated from them as well, neglecting the basis in ourselves for a moral respect and concern for their well-being.

Proponents of an anthropocentric position may seek to meet this charge by pointing out that we have a duty toward ourselves to perfect our own nature, which includes our sensitivity and our conation; and that an attitude of care towards nonpersons may be instrumental to promote this goal. This provides an anthropocentric ground for a humanistic attitude toward other living beings and nature in general, in the sense that we will be disposed to recognise that we have indirect moral duties to other living beings.

The opponents of this position, however, may not find that this response is adequate. They suspect that it involves a risk of the alienation outlined above. To avoid this, it may be necessary to include these other properties in our practical identity, and thereby acquire a biocentric disposition favourable to a general reverence for life, and compassion with all living beings. This involves a more adequate understanding of what it is to be a human being, and provides a nonanthropocentric ground for a humanistic attitude toward other living beings. In that case we are disposed to recognise that we have direct moral duties to them.

In this way our practical personal identity becomes an organ for tuning in to the situation of living beings who are not persons, enabling us to have empathy with their desires and needs, and to have sympathy with their joys or sorrows or with their beneficial or harmful states. Being aware of our own emotions and our own body, we are able to resonate with the weal and woe of others, both human and nonhuman. This pertains not only to rational communication but also to the tacit dimensions of communication involving emotions and the body language. In this way we also become disposed to apply the Norm of Reciprocity in relation to them, both in symmetrical and asymmetrical cases, and to avoid inflicting harms on them which we would not wish for ourselves if we were in their place.

In this part of the argument I have relied on a positive conception of oneself in terms of practical personal identity. I believe, however, that this needs to be supplemented with a negative approach as well. Even if identifications and attachments are basic for the dualistic aspect of our moral lives, it should not be emphasised to the exclusion of the non-dualistic aspect which consists in discernment and detachment from this identity. That will be an apophatic

approach, rather than a kataphatic, and will pertain to one's unity with all there is. This leads from ethics to mysticism, which may be of importance for one's deeper motivations to live a moral life. In Buddhist and Christian contexts this leads into the notions of wisdom, emptiness, love and compassion, and also the deeper foundation for the golden rule. But I shall not pursue these threads here.

Gradual inherent value

Suppose, for the sake of the argument, that we accept this justification of a biocentric position. The conclusion so far is that all individual living organisms are to be ascribed a moral status as moral subjects with inherent moral status value, irrespective of whether they are moral persons or not. The next question we must face then is whether this inherent value is equal or gradual. Regan and Taylor have favoured the assumption of equality with regard to inherent value. Regan supposes this applies to all subjects-of-a-life, and Taylor that it applies to all teleological centres of a life. Taylor's position in this regard seems to come close to Albert Schweitzer's who appears to hold that all living beings have an equal moral status on account of their will to live.

No doubt, there are difficulties with this position. One difficulty stems from conflicts of interest between humans and nonhumans. As things are, we humans cannot avoid harming other living beings if we are to survive and live well ourselves. For one thing, we can hardly avoid taking life in order to have something to eat – if not the lives of animals, then at least of plants. But is it possible to justify this on the assumption that all living beings have an equal moral status value?

According to Regan's ethics of animal rights, moral agents are bound by a strong duty not to cause harm to moral subjects-of-a-life. He draws very far reaching consequences of this with regard to our respect for the self-determination of this class of animals, and with regard to our concern for their well-being. This implies radical changes of our current modes of production of food and fibres. It may be, however, that his theory would permit the use of lower animals on par with plants as having only instrumental value.

On Regan's view, we have a direct moral duty not to cause avoidable harm to subjects-of-a-life. He discards a consequentialist interpretation of this duty in terms of minimising harm. On the consequentialist interpretation it may (perhaps) be justifiable to cause harm to innocent subjects if this is outweighed by reducing the sum of harm to others, or if it is outweighed by the benefit it causes to others. In keeping with deontological ethics, Regan rejects this kind of overriding. Instead he proposes two principles for when it may be permissible to inflict harm. His principles are formulated in terms of rights, but we may reformulate them in terms of duties as follows. The first is the minimise (or minimise overriding) principle: If a moral agent must choose between two actions, both of which have equally serious consequences for those affected, and

A CASUISTIC ARGUMENT

one of them will affect fewer subjects-of-a-life than the other, then the agent has a duty to choose this one. The second is the worse-off principle: If an agent must choose between two actions, of which one will have more serious consequences than the other, then the agent has a duty to choose the alternative with the less serious consequences, even if it affects a greater number of subjects-of-a-life.³⁷

I agree with Taylor who gives Regan credit for having made a significant contribution to this field by formulating these principles. He adapts them to his own biocentric ethics, and calls the first one the principle of minimum wrong, and the second the principle of proportionality. Taylor has an interesting clarification of the notion of serious harm in terms of its affecting a central (vital) or a peripheral interest or need.³⁸

Taylor assumes not only that all individual living organisms have a moral status, but also that they have an equal moral status value, or inherent worth, as he calls it. This assumption creates problems for the resolution of conflicts of interest between humans and nonhumans. Taylor seeks to solve these conflicts by means of the distinction between central and peripheral interests, and the numbers affected. It is open to doubt, however, whether these premises suffice for his attempt to justify cases where human peripheral interests are given priority over the central and vital interests of other animals and plants.³⁹

Taylor does make a case for vegetarianism. The reason why we ought to eat plants rather than animals is not based on any difference in moral status value, since he denies that there is any; it is based on two other considerations. One is the suffering caused to animals, and the other is ecological, that we could drastically reduce the amount of cultivated land needed for human food production by changing from a meat-eating to a vegetarian culture.⁴⁰

I suppose this argument could be reinforced by assuming that living organisms have a gradual rather than an equal moral status value. There are others, like Louis Lombardi, who have developed a theory of gradual inherent value.⁴¹ In my opinion, this is a very natural position to take, and quite in keeping with the casuistic approach we have been pursuing.

In the preceding argument I have assumed that moral status value should be ascribed equally to the class of humans on account of their being moral persons. Moreover, I have assumed that if human moral persons are taken as paradigmatic examples of beings who are ascribed moral status, it may be possible to extend this status to nonhuman beings on the basis of normatively relevant similarities. Descriptively, humans have a number of properties in common with other living beings; and normatively, these properties take on a moral relevance in so far as they are endorsed as part of our practical personal identity.

I have assumed that the basic similarity between human moral persons and all other living organisms is the inherent striving or conation of each organism to maintain itself, which normally involves its capability of self-organisation and self-reproduction. This has been assumed as an internal criterion for the extension of inherent moral status value.

This property, I now suggest, can be redescribed as a kind of biological self-determination which is more or less similar to the rational self-determination of moral agents, and differing in different species of living organisms. I propose that we use this property of self-determination as a basis for the gradation of inherent value. Then we can assume that the degree of inherent value of an organism is proportional with the degree of similarity of its capability of self-determination as compared to the rational self-determination of moral agents. Moreover, we can assume that the strength of the direct moral duties which are binding on moral agents in relation to an organism, is proportional with its degree of inherent value.

If this is accepted, we can use the three kinds of morally relevant properties distinguished above for grading inherent value. We may assume that animals who are subjects-of-a-life and have self-consciousness have the greatest similarity with moral persons and moral agents, and therefore should be ascribed a very high degree of inherent value. Our direct duties to them, for instance not to harm them, are proportionately stronger; almost as strong as in the case of human moral persons. Clearly, this will have strong implications for the way we treat other primates, mammals, and birds. Animals who are conscious and sentient, but perhaps not subjects-of-a-life, may be ascribed a somewhat lower degree of inherent value, and our direct duties to them may be somewhat weaker. This may pertain to reptiles, amphibians, fish and many species of invertebrates. However, in these cases the project of grading is fraught with uncertainties, and for this reason ought perhaps not to be attempted. Moreover, organisms which are non-conscious and non-sentient, if such there are, may be ascribed a still lower degree of inherent value, and our duties to them may be still weaker. This may pertain to some species of animals, and to plants and micro-organisms. Even if their degree of inherent value is low, it is not zero. For that reason, we have a duty not to harm them if it can be avoided, but if it cannot be avoided, we have a duty to choose those alternatives of action which cause the least harm.

These considerations seem to add up to an argument in favour of a vegetarian diet for us as moral agents. If we are to survive, we must provide food which can hardly be done without harming other organisms. In most contexts, however, we have a choice between eating plants and eating animals. The assumption of gradual inherent value provides us with a reason for assuming that we shall cause a lesser harm by eating plants. If this is accepted, we have a *prima facie* moral duty to be vegetarians.

7. AN ASSESSMENT OF WARREN'S MULTI-CRITERIAL JUSTIFICATION OF MORAL STATUS

Mary Anne Warren criticises uni-criterial justifications of moral status and proposes a multi-criterial justification as an alternative. She suggests seven criteria, three of which are internal and four of which are external and relational. The three internal criteria are: (1) the teleological striving of living organisms, which she takes as a basis for the Principle of Respect for Life; (2) sentience, as a basis for the Principle of Anti-Cruelty; and (3) personhood, as a basis for the Principle of Agent's Rights. The four external relational criteria are: (4) membership in a human society, as a basis for the Human Rights Principle; (5) membership in an ecological society, as a basis for the Ecological Principle; (6) membership in a mixed society of humans and domestic animals, as a basis for the Interspecific Principle; and (7) other people's ascription of moral status value, as a basis for the Transitivity of Respect Principle.

The first criterion and principle justifies a biocentric position in the sense that it ascribes moral status to all individual living organisms. This is the position of Schweitzer and Taylor, and Warren agrees with them, and I with her. However, she rejects their assumption that moral status value must be egalitarian and uses the next two criteria as a justification for a grading of moral status value instead. There is a limit to this grading, however, since she ascribes an equal moral status value to the class of moral agents and moral persons. Once again, I agree with her.

With regard to her first principle, I have earlier remarked that I believe it can be more firmly justified than she appears to do, on the basis of the inherent teleological striving of each organism. As for her distinction between the third and the fourth principle, I have remarked that I believe it is redundant, since the rights of both agents and persons can be justified from the same inherent factor, provided we assume that moral persons have the same capabilities of being moral agents as moral agents have, whether they have the ability of being a moral agent or not. If this is accepted, there will be no need for a separate justification of a Human Rights Principle based on external relations such as membership in a human community.

I think that her seventh principle is also redundant: (7) the Transitivity of Respect Principle, which is based on respect for other people's attributions of moral status. This can be sufficiently justified on the basis of duties of respect for other persons, a duty which is binding on all moral agents. Alternatively, it can be justified on the basis of certain cultural or political rights.

There remain, then, two principles on her list which I have not yet commented on: (5) the Ecological Principle, and (6) the Interspecific Principle. Warren emphasises that these principles are not based on internal factors, but on external, relational factors; membership in an ecosystem or in a mixed community of humans and domestic animals.

Warren does not attempt to argue that supra-individual wholes such as ecosystems or species-populations have an inherent value in the same sense of the term that we have used earlier, which is tied up with a deontological ethics. There are others who have attempted that line of justification, drawing an analogical extension from the teleological striving of individual organisms to supra-individual wholes.⁴² But that appears to be a rather speculative approach, and I think it is wise of her to abstain from it.

When moral status value is justified on the basis of external relations, one should perhaps distinguish more clearly than Warren does between the moral status value of individuals who are members of supra-individual wholes such as ecosystems or species, and the moral status value of these wholes. With regard to the value of the whole, it may be justified in different ways within the framework of different kinds of teleological ethics.

In a consequentialist teleological ethics it is likely that such wholes are ascribed only an instrumental value, as a resource or a means in relation to the goals of human beings (or perhaps, even of nonhuman beings). This kind of justification is typical within the framework of a theory for sustainable development. Here species and ecosystems are regarded as resources and means for the production of human goods in the present and for future generations. Moreover, within such a framework it is likely that the moral status value ascribed to individual members of these wholes is also regarded as only an instrumental value. In that case, the moral status value does not provide any strong protection for the interests of the individual. 'We should harvest only a sustainable yield per year of a species', could be a slogan within such a framework.

In a holistic teleological ethics, on the other hand, it is possible to ascribe intrinsic value to such wholes. This seems to be the line taken in one of Baird Callicott's interpretations of the Land Ethic of Aldo Leopold – an interpretation he has developed in the light of David Hume and Charles Darwin. Furthermore, within this kind of framework it is likely that the moral status value ascribed to individual members of these wholes is also regarded as an intrinsic value in so far as the individuals are understood as integral parts of the whole, as participating in its meaning and value.

How much protection does this kind of moral status value provide for the interests of the individuals? The answer to this will depend on how one understands the relation of the individual to the whole. This point can be brought out by Aldo Leopold's formulation of an ecological criterion of what is morally right:

A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.⁴³

If the term 'when' in this formulation is interpreted in the direction of 'only if', we risk having a severely authoritarian kind of ecological ethics of the type which is often criticised under the label of 'eco-fascism'. Fortunately, there is no good

A CASUISTIC ARGUMENT

reason to interpret Leopold in that direction. It is more reasonable to interpret 'when' as 'if'. In that case, the Land Ethic will provide us with a supplementary consideration which comes as an addition to the common morality, and not a substitute for it.⁴⁴

Suppose an organism has a certain degree of inherent moral status value on the basis of the properties which are inherent in its nature. This is the theory we have argued for in the preceding, as an extension of the ordinary morality. It implies that moral agents have direct duties towards this organism, and that the strength of these duties are somehow proportional to the organism's degree of inherent value. Suppose, moreover, that this organism belongs to an endangered species or ecosystem. Warren draws two implications from this. First, she assumes that this external, relational consideration increases the strength of our duties towards the organism, so that they become stronger than they would have been on the basis of the internal factor alone. So far, I agree with her. Second, she assumes that this external, relational consideration increases the moral status value of the organism as well. With this I disagree, since this seems to be a redundant assumption, and it is of no importance for the first implication.

As an alternative, I find it much more plausible to assume that the inherent moral status value of an organism is supervenient on its inherent properties alone, and to suppose that this is one of several factors which determine the strength of our direct duties towards the organism. The other factors should be listed separately, and not as determinants of the inherent value of the organism.

When we are in a situation where we cannot avoid causing harm to other organisms, and where we have a choice between alternatives of action which will affect different species in different ways and different numbers, the following list may help us clarify which alternative of action will cause the least harm. We may ask:

- What kinds of living organisms are affected by the possible consequences of the alternatives of action we can choose among?
- What are the probabilities of these consequences?
- What kind of interests do they affect – are they central (vital) or peripheral?
- How many organisms are affected negatively or positively by each alternative?
- What degree of inherent moral status value can be attributed to each species of organisms affected?
- Do any of these organisms belong to species or ecosystems that are ascribed a special value, either instrumentally or intrinsically, by other agents whom we should respect?
- Are any of these species or ecosystems endangered?

- Do any of these organisms belong to species or ecosystems in relation to which we have contracted special moral obligations through our earlier actions, for instance by domesticating them?

If we inquire into these questions, we may have a better basis for assessing the weight of our direct duties toward the organisms affected. If we cannot avoid causing harm, it may help us to choose the action which causes the least harm.

8. CONCLUDING REMARKS

In this paper I have raised the question about who or what can have a moral status, and argued for a biocentric answer which extends moral status from human moral agents and persons to all individual living organisms. If this extension is accepted, living beings will be upgraded from being mere objects to being moral subjects like ourselves, albeit not responsible moral agents. Our relation to them will be something more than a subject/object relation; it will be a subject/subject relation.

What is the binding force of a position such as this? Can it be claimed to have any validity and to be binding on people in general?

I have not attempted to justify this position in terms of a strong cognitivism. It is not claimed to be a moral truth or a moral fact. Maybe it is, maybe it is not. That question has been bracketed. For this reason, the argument should not be considered to be a kind of epistemological fundamentalism.

On the other hand, I claim that this position represents something more than a noncognitivist expression of feelings or decisions of will. It claims to be valid in the sense of a weak cognitivism; that is, to be justifiable in terms of more or less good reasons. But how strong can this claim be?

I have outlined three kinds of recognition theories of validity. The strongest of these is the one proposed by discourse ethics, which assumes that a thesis is morally valid and binding in so far as it has its source in a certain kind of universal rational consensus. This consensus is understood along the lines of Peirce's pragmatism and is of a counterfactual kind. It is the agreement which reasonable people would presumably attain in the long run if inquiry and discussion were pursued as far as it could fruitfully go.⁴⁵ This functions as a kind of regulative idea. If I claim that the position argued for here is valid in this strong sense, the claim will be quite hypothetical and speculative. There is very little factual consensus in the present world about such a position. But this need not be a crucial objection, because one could assume that the public opinion is moving in that direction. It may take some hundreds of years, but we are on the way. We should not forget that it is not more than 150 years ago since slavery was generally accepted, but that has changed considerably. This same thing might happen with regard to our views on living beings who are not moral persons. So

A CASUISTIC ARGUMENT

I think that it is quite in order to believe in the possible pragmatic validity of this position, as a testifiable hypothesis.

The intermediate theory of validity is the recognition theory of dialectics of Aristotle. One of the sources of validity or normativity according to this theory, is consensus within a particular cultural community or tradition. There are a number of cultural communities and traditions in the world, both now and from ancient times, that have espoused a biocentric position with regard to moral status. It is even possible that these are gaining a growing support.

At the other end of the spectrum there is the endorsement theory of the sources of normativity proposed by Korsgaard. It is grounded in our practical personal identity. I have made use of this theory in my justification. In so far as I acknowledge that there are certain similarities between myself and other organisms, such as the feelings that I have in common with animals and the conation that I have in common with all living organisms, and in so far as I endorse these properties as part of my practical personal identity, I have personal reasons for recognising their normative relevance as grounds for extending moral status from myself and other moral persons, to other moral subjects who are not persons. Whether I do this or not, depends on what kind of person I wish to be. If this is the kind of person I wish to be, I have a good reason to support a biocentric position, even in the absence of universal or local consensus.

NOTES

¹ Warren 1997.

² Warren 1997, p. 3.

³This is also the standpoint of Taylor 1986. He discusses this in chapter five: 'Do Animals and Plants Have Rights?', pp. 219-255.

⁴ My remarks in the text are fairly close to the way Rawls 1971, pp. 25, 30, has distinguished teleological and deontological ethics.

⁵ Warren 1997, pp. 238 f.

⁶The idea here follows the pattern of Toulmin's theory of argumentation. Cp. Toulmin *et al.* 1979, chapter 4: 'Warrants', pp. 43-56, 78 ff.

⁷ Regan 1983, pp. 235 ff.

⁸Taylor 1986, explains his concepts of 'intrinsic value' and 'inherent value' on p. 73, and 'inherent worth' on p. 75. In the latter context Taylor explicitly states that his term 'inherent worth' is 'essentially identical' with Regan's term 'inherent value'. Taylor's explanation of this term on p. 75 should be read in the light of his comments on the notion of respect on p. 91. He seems to assume that two conditions must be met in order to ascribe inherent worth to an object. First, it must have a good of its own, which presupposes that it is a teleological centre of life; and secondly, other moral agents must be bound by direct moral duties toward it to promote or preserve its good as an end in itself, which requires, as a minimum, that they do not cause harm to it. This last requirement is in line with the way I introduced the notion of moral status and moral status value above. I think it is

reasonable to interpret Regan along the same lines, although he is perhaps not so clear as could be desired on this point.

⁹The second half of this principle is often formulated as follows: '... , cases which are relevantly different, should be treated in a differential manner.' The classical source for this conception may well be Aristotle's formulation in *The Nicomachean Ethics*, V, 3, 1131a21: '... , if they are not equal, they will not have what is equal, ...' As Øyvind Baune has pointed out, the first part of the formulation is logically sound. It follows the logical form of a *modus ponens*. The second part, however, commits the logical mistake of denying the antecedent. Some morally relevant differences do provide a reason for a differential treatment, others do not. The question will depend on whether the decisive property is considered to be a necessary or sufficient condition, as discussed in the text.

¹⁰Cp. Jonsen and Toulmin 1988, especially their summary of the method in Chapter 13.

¹¹On the semiotic distinction between a syntactic, semantic and pragmatic approach to language, see Morris 1938 and 1955.

¹²Cp. Perelman and Olbrechts-Tyteca 1969, p. 4.

¹³Aristotle, *Topics*, I, i.

¹⁴Cp. Hart 1961, pp. 92 f, 96 ff, 99 ff, 105.

¹⁵Cp. Jonsen and Toulmin 1988, pp. 164, 170, 174 f.

¹⁶Cp. Apel 1973b, Habermas 1973, and Korsgaard 1996, especially 'Lecture 2-3'.

¹⁷A good study of the older sources in this tradition is Sorabji 1993.

¹⁸Warren 1997, p. 43.

¹⁹Cp. Rolston 1988, p. 114, where he makes the distinction between 'anthropocentric' and 'anthropogenic' approaches. Callicott discusses the same conceptual distinction (without using these terms) in 'On the Intrinsic Value of Nonhuman Species' (1986), reprinted in Callicott 1989, pp.129-155, at pp. 151 f.

²⁰Cp. Perelman's proposal to distinguish between argumentation which aims at persuading or convincing in terms of whether it appeals to premises which are recognised by a particular or a universal audience. Perelman and Olbrechts-Tyteca 1969, pp. 26 ff, 31 ff.

²¹Warren 1997, p. 156.

²²Cp. Regan 1978 and Singer 1993, chapter 3, pp. 55 ff: 'Equality for Animals', where he follows up Bentham's version of the argument from marginal cases.

²³Regan 1983, p. 243; quoted by Warren 1997, p. 107.

²⁴Cp. Saugstad 1993, p. 159-191.

²⁵Cp. Verdoodt 1964, p. 78; and Lindholm 1989.

²⁶Cp. Perelman and Olbrechts-Tyteca 1969, pp. 105-107.

²⁷Cp. Singer 1975, p. 179; second edition 1990, p. 174.

²⁸Cp. MacLean 1990.

²⁹J. Baird Callicott uses the term 'conativism' to characterise the positions of Albert Schweitzer, Kenneth Goodpaster and Paul F. Taylor. Cp. Callicott 1989, pp. 142-147, 263. Schweitzer, Goodpaster and Taylor do not use this term themselves, however, but Goodpaster quotes Feinberg who uses it without adhering to this position. Cp. Goodpaster 1978; reprinted in Zimmerman 1993 on p. 59; Feinberg 1974, pp. 43-68; reprinted in Feinberg 1980, on p. 165.

³⁰Cp. Maturana and Varela 1975; Maturana and Varela 1980; and Jantsch 1980, pp. 7, 9, 64 ff, 81, 98 ff, 116, 140.

³¹Cp. Taylor 1986, p. 45, where he characterises a living thing 'as a unified system of organized activity, the constant tendency of which is to preserve its existence by protecting and promoting its well-being'; and on p. 121 he characterises 'the organism as

A CASUISTIC ARGUMENT

a teleological center of life, striving to preserve itself'. His notion of 'striving' in this connection warrants the use of the term 'conation'. On pp. 60-71 he connects this with the good of a being.

³²Cp. Spinoza: *Ethics*, Part 3, Proposition 9, Note; together with Proposition 11, Note; and 13, Note. I have treated this more extensively in Wetlesen 1979, pp.113-129.

³³They agree that it makes sense to speak of the good of an organism relative to its conation, regardless of whether the organism has consciousness and sentience or not. There is more uncertainty whether the term 'interest' can be used as equivalent to conation in this context. In Regan 1981, at p. 22, he appears to hold the view that having conation is sufficient for being ascribed an interest. Here he distinguishes two senses of ascribing interests: 'To speak of A's interests in X might mean either (a) that A is interested in (wants, desires, hopes for, cares about, etc) X, or (b) that X is in A's interest (that X will contribute to A's good, or well-being, or welfare).' This distinction can be applied to the interests of conscious and sentient beings, which in fact is done by Regan 1983, p. 87, and by Taylor 1986, p. 63. The question is whether it can also be applied to nonconscious and nonsentient organisms. Regan 1981 seems to hold that it can, as does Goodpaster 1993, p. 59; and Rolston 1988, pp. 111 ff. Taylor appears to be more reluctant, and the same thing applies to Feinberg 1980, pp. 164 ff.

³⁴Warren 1997, pp. 34-37.

³⁵Warren 1997, pp. 29, 47, and especially p. 151.

³⁶Cp. Korsgaard 1996, pp. 90 ff, 99; and Frankfurt 1971.

³⁷Cp. Regan 1983, p. 258, the respect principle; pp. 187, 262, the harm principle; p. 302, the consequentialist minimise harm principle; p. 305 the deontological minimise (minimise overriding) principle; and p. 308, the worse-off principle.

³⁸Taylor 1986, p. 284, the principle of minimum wrong; pp. 277 f, the principle of proportionality.

³⁹Taylor 1986, on the resolution of conflicts between human and nonhuman interests, pp. 277 f.

⁴⁰Taylor 1986, pp. 294-296.

⁴¹Cp. Lombardi 1983.

⁴²A case in point would be Johnson 1991; Chapter 4: 'Holism', pp. 148-183.

⁴³Leopold 1949, pp. 224 f.

⁴⁴A defence of Leopold's land ethic along these lines have been set forth by Heffernan 1982; and also by Callicott 1993, especially at pp. 361 ff.

⁴⁵Cp. Peirce 1966, pp. 91 ff: 'The Fixation of Belief'; and pp. 113 ff: 'How to Make Our Ideas Clear', pp. 113 ff, especially p. 133. Also Misak 1991, p. 44.

REFERENCES

- Apel, Karl-Otto 1973a. *Transformation der Philosophie*, Vol 2: *Das Apriori der Kommunikationsgemeinschaft*. Frankfurt a M: Suhrkamp.
- Apel, Karl-Otto 1973b. 'Szientismus oder transzendente Hermeneutik? Zur Frage nach dem Subjekt der Zeicheninterpretation in der Semiotik des Pragmatismus', in Apel 1973a, pp 178-219.
- Apel, Karl-Otto (ed.) 1976. *Sprachpragmatik und Philosophie*. Frankfurt a M: Suhrkamp.
- Callicott, J. Baird 1989. *In Defence of the Land Ethic; Essays in Environmental Philosophy*. Albany: State University of New York Press.

- Callicott, J. Baird 1993. 'The Search for an Environmental Ethic', in Tom Regan (ed) *Matters of Life and Death; New Introductory Essays in Moral Philosophy*, second edition, pp 322-380. New York: McGraw Hill.
- Eide, Asbjørn et al. (eds) 1989. *The Universal Declaration of Human Rights: A Commentary*. Oslo: Scandinavian University Press.
- Fahrenbach, H (ed.) 1973. *Wirklichkeit und Reflexion. Festschrift für Walter Schulz*. Pfullingen: Neske.
- Feinberg, Joel 1974. 'The Rights of Animals and Unborn Generations', in W.T. Blackstone (ed.) *Philosophy and Environmental Crisis*. Athens: University of Georgia Press, pp 43-68; reprinted i Feinberg 1980, pp 159-184.
- Feinberg, Joel 1980. *Rights, Justice, and the Bounds of Liberty, Essays in Social Philosophy*. Princeton, N J: Princeton University Press.
- Frankfurt, Harry G. 1971. 'Freedom of the Will and the Concept of a Person', *Journal of Philosophy*, **68**: 5-20; reprinted in Frankfurt 1988, pp 11-25.
- Frankfurt, Harry G. 1988. *The Importance of What We Care About*. Cambridge: Cambridge University Press.
- Goodpaster, Kenneth 1978. 'On Being Morally Considerable', *Journal of Philosophy*, **75**: 306-325; reprinted in Zimmerman et al. 1993, 49-65.
- Habermas, Jürgen 1973. 'Wahrheitstheorien', in Fahrenbach 1973, pp 211-266.
- Habermas, Jürgen 1976. 'Was heisst Universalpragmatik?', in Apel 1976, pp 174-272.
- Hart, H.L.A. 1961. *The Concept of Law*. Oxford: Clarendon Press.
- Heffernan, J.D. 1982. 'The land ethic: a critical appraisal,' *Environmental Ethics*, **4**: 235-247.
- Jantsch, Erich 1980. *The Self-Organizing Universe: Scientific and Human Implications of the Emerging Paradigm of Evolution*. Oxford: Pergamon Press.
- Johnson, Lawrence E. 1991. *A Morally Deep World. An Essay on Moral Significance and Environmental Ethics*. Cambridge: Cambridge University Press.
- Jonsen, Albert R. and Stephen Toulmin 1988. *The Abuse of Casuistry; A History of Moral Reasoning*. Berkeley: University of California Press.
- Korsgaard, Christine M. 1996. *The Sources of Normativity*. Cambridge: Cambridge University Press.
- Leopold, Aldo 1949. *A Sand County Almanac, and Sketches Here and There*. London: Oxford University Press.
- Lindholm, Tore 1989. 'Article 1: A New Beginning', in Eide et al. 1989, pp 31-55.
- Lombardi, Louis 1983. 'Inherent Worth, Respect, and Rights', *Environmental Ethics*, **5**(3): 257-270.
- MacLean, Paul D. 1990. *The Triune Braine in Evolution. Role in Paleocerebral Functions*. New York: Plenum Press.
- Maturana, H.R. and F. Varela 1975. *Autopoietic Systems*. Report BCL 9.4. Urbana, Ill: Biological Computer Laboratory, University of Illinois.
- Maturana, H.R. and F. Varela 1980. *Autopoiesis and Cognition*, Dordrecht: Reidel.
- Misak, C.J. 1991. *Truth and the End of Inquiry; A Peircian Account of Truth*. Oxford: Clarendon Press.
- Morris, Charles 1938. 'Foundations of the Theory of Signs', in *International Encyclopedia of Unified Science*, Vol 1, No 2, p 1-59. Chicago: University of Chicago Press.
- Morris, Charles 1955. *Signs, Language, Behavior*, New York: Braziller.
- Peirce, Charles S. 1966. *Selected Writings (Values in a Universe of Chance)*, ed P. P. Wiener. New York: Dover.

A CASUISTIC ARGUMENT

- Perelman, Chaim and L. Olbrechts-Tyteca 1969. *The New Rhetoric; A Treatise on Argumentation*. Notre Dame: University of Notre Dame Press.
- Rawls, John 1971. *A Theory of Justice*. Cambridge, Mass: Harvard University Press.
- Regan, Tom 1978. 'An Examination and Defense of One Argument Concerning Animal Rights', *Inquiry*, **22**: 189-219.
- Regan, Tom 1981. 'The Nature and Possibility of an Environmental Ethic', *Environmental Ethics*, **3**(1): 19-34.
- Regan, Tom 1983. *The Case for Animal Rights*, Berkeley: University of California Press.
- Rolston, Holmes 1988. *Environmental Ethics; Duties to and Values in the Natural World*. Philadelphia: Temple University Press.
- Saugstad, Jens 1993. *The Moral Ontology of Human Fetuses, A Metaphysical Investigation of Personhood*. Oslo: University of Oslo. (Preliminary edition, to be published by Olms Verlag, Hildesheim).
- Singer, Peter 1975. *Animal Liberation, A New Ethic for Our Treatment of Animals*. New York: Avon Books. Second edition 1990. *Animal Liberation*. London: Thorsons.
- Singer, Peter 1993. *Practical Ethics*. Second edition. Cambridge: Cambridge University Press.
- Sorabji, Richard 1993. *Animal Minds and Human Morals. The Origins of the Western Debate*. London: Duckworth.
- Taylor, Paul F. 1986. *Respect for Nature. A Theory of Environmental Ethics*. Princeton, NJ: Princeton University Press.
- Toulmin, Stephen et al. 1979. *An Introduction to Reasoning*. New York: Macmillan.
- Verdoodt, Albert 1964. *Naissance et signification de la Déclaration Universelle des Droits de l'Homme*. Louvain: L'Université de Louvain.
- Warren, Mary Anne 1997. *Moral Status; Obligations to Persons and Other Living Beings*. Oxford: Clarendon Press.
- Wetlesen, Jon 1979. *The Sage and the Way; Spinoza's Ethics of Freedom*. Assen: Van Gorcum.
- Zimmerman, M. F. et al. (eds) 1993. *Environmental Philosophy: From Animal rights to Radical Ecology*. Englewood Cliffs, NJ: Prentice Hall.